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after a suit to foreclose the senior mortgage, to which he was not a party. *Catterlin* v. *Armstrong,* 101 Ind. 258; *Foster* v. *Johnson,* 44 Minn. 290; *Peabody* v. *Roberts,* 47 Barb. 91; *Besser* v. *Hawthorne,* 3 Ore. 129; *Turner* v. *Phelps,* 46 Tex. 251. See also *Alexander* v. *Greenwood,* 24 Cal. 506. *Contra, Rose* v. *Walk,* 149 Ill. 60, approved in *Rodman* v. *Quick,* 211 Ill. 546. 555.

PARTNERS AS TENANTS IN COMMON. — The Sewell's (plaintiffs below) claim title to certain mineral rights based on a conveyance "by John Sebastian to J. W. Sewell & Co., which was a partnership composed of John W. Sewell and Harriet Sewell—father and mother, respectively, of plaintiffs, whose rights descended in equal shares to plaintiffs, their children and heirs at law. The Kentucky Coal Co. claims through a devise by Sebastian subsequent to this conveyance." *Held,* "the deed to J. W. Sewell and Co. vested the legal title in the partners as tenants in common." *Kentucky Block Cannel Coal Co. et al.* v. *Sewell et al.* (C. C. A. 6th circ.) 249 Fed. 840.

The inadequacy of the terminology of common law tenure to describe accurately the nature of the conjoint holding by partners has frequently been mentioned (Cf. 9 COL. L. REV. 213, ff.; 29 HARV. L. REV. 163; 15 MICH. L. REV. 618, ff.) Lord HOLT, in *Heydon* v. *Heydon,* apparently considered partners as joint tenants and a vendee of either partner's interest a tenant in common with the other partners, but the rigid application of that doctrine in instances where parties were claiming through the rights of partners as such and not through their rights as tenants has caused the confusion that has been so often deplored. The use of the inaccurate terminology in the instant case will do no harm if it is plainly recognized that the court is describing the nature of the conjoint *holding* without reference to any partnership *activities* in dealing with the property. The Sewells—father and mother—received the property as tenants by entireties (being husband and wife) and dealt with it during their lives as partners. At their death their children and heirs at law received the interests of the parents and held, apparently, by the old common law title of coparceners, but as the Coal Company were claiming through a later conveyance of Sebastian and there was no question as to the partnership rights of the elder Sewells or any creditors of them as partners, the description of the elder Sewells as tenants in common may be considered as meaning nothing more than that they held conjointly under a conveyance which was prior to the one to the Coal Company and therefore they and their heirs took precedence in the chain of title. Any dispute as to the meaning of the decision would be avoided by the adoption of the terminology of our new UNIFORM PARTNERSHIP ACT. In Section 25 (1) of this Act a holding such as that of the elder Sewells is correctly termed a tenancy in partnership and for this terminology we have a good old common law precedent as early as the time of Edward III. (Cf. STATHAMS ABRIDGMENT OF THE LAW. Translated by Klingelsmith, p. 7; 15 MICH. LAW REV. 618, note 32.)

PERSONS SUBJECT TO MILITARY LAW.—Subdivision (d) of Art. 2, of the Articles of War, (Sec. 1342, R. S., as amended by Act of Congress, Aug. 29, 1916), relating to "persons subject to military law," reads: "(d). All re-

tainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, thought not otherwise subject to these articles." The words *"acompanying or,"* were not in the old article, number 63. Two recent cases applying this subdivision are of interest. G, a civilian employee of the U. S. Shipping Board, went to Europe as a mate on a military transport; he was there discharged, and sent back to the United States on another transport. He volunteered to stand watch on the vessel, and did so for several days, but finally refused to continue. For this disobedience to the order of the army officer in command of the vessel, he was tried by court-martial and sentenced to five years' imprisonment. On *habeas corpus* (after reaching the United States), it was held he was "accompanying" the army, "voluntarily serving with it," "in the field," and was punishable as a person "subject to military law" under this article. *Ex parte Gerlach* (1917), 247 Fed. R. 616.

F applied to the Bureau of the U. S. Army Transport Service, which is under the Quartermaster's Department, for employment, was accepted, entered into an agreement to serve, and was assigned to duty as chief cook on a steamship then lying at Brooklyn, engaged in transporting supplies for the U. S. Army. Just before the ship sailed for a foreign port, F attempted to leave the ship with his baggage to desert the service, and refused to return thereto. He was arrested by the military police, sent to Camp Merritt, N. J., and tried by a court-martial. He sued out a writ of *habeas corpus*: *Held*: Although a civilian employee, he was "serving with the armies in the field," and a court-martial had jurisdiction to try him for his attempt to desert; also he can not question the jurisdiction of the court-martial to impose the death or other penalty (A. W. 58), on the ground that he was not charged "on a presentment or indictment of a grand jury," under the Fifth Amendment to the United States Constitution, since that expressly excepted "cases arising in the land or naval forces." The court says the words *"in the field,"* do not refer to land only, but to any place, whether on land or water, apart from the permanent cantonments or fortifications where military operations are being conducted."

RATES OF PUBLIC UTILITIES—RIGHT OF CARRIER TO REPARATION WHEN COMPELLED TO CARRY AT CONFISCATORY RATE.—The case of *M. St. P. & S. S. M. Ry.* v. *Washburn Lignite Coal Co.*, (N. D.), 168 N. W. 684, is an echo of the *Lignite Coal Case*, 236 U. S. 585. The latter case decided that the rates fixed by the legislature of North Dakota for the carriage of lignite coal were confiscatory, and dissolved an injunction restraining the carrier from charging more than the statutory rates. The present case is an action to recover from the coal company $2,6000, the alleged difference between the statutory rate and a reasonable rate for carrying coal for defendant company while the injunction was in force. It has often been held that a shipper paying under protest more than a reasonable freight rate may recover the excess. The question here is